

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

William Ahern, Janet Beautz (for Santa Cruz County Board of Supervisors), Charlie Betcher, Robert J. Boileau, William Burns, Alvin Colley, James Crettol, Michael Gallo, Dave Hennessy, Dennis Herrera, Nettie Hoge, Walter Johnson, Fred Keeley, Reggie Knox, William Knox, Bruce Livingston, Elizabeth Martin, Barbara McIver, Robert Meacher, Deidra O'Merde, Elizabeth Sholes, Mary Frances Smith, Ladan Sobhani, Peter Van Zant, Mary Ann Woomer, and Carl Zichella,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

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Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

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Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)

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Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

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Case 02-02-027  
(Filed February 27, 2002)

Application 00-11-038  
(Filed November 16, 2000)

Application 00-11-056  
(Filed November 22, 2000)

Application 00-10-028  
(Filed October 17, 2000)

Rehearing on  
End of Rate Freeze

**SCOPING MEMO IN CASE 02-02-027  
AND CONSOLIDATION OF PROCEEDINGS**

Pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rules), this Scoping Memo and Ruling addresses (1) issues, (2) schedule, hearings and record, (3) category, (4) final oral argument, (5) ex parte communications, and (6) electronic service. Further, based on the similarity of issues, this Ruling consolidates Case (C.) 02-02-027 with the rehearing of the rate freeze portion of Application (A.) 00-11-038 *et al.*

**1. Issues**

The Utility Reform Network (TURN), on behalf of complainants, states that the issues are (a) whether the Commission should reduce defendant's rates to cost, and (b) whether the Commission should order a refund of surcharge revenues not used for energy procurement costs or other costs of providing ongoing utility service. (Complaint, February 27, 2002, page 15.) As background, TURN refers to the rate freeze enacted in Assembly Bill (AB) 1890, and two Commission-adopted surcharges in early 2001 which, according to TURN, increased rates approximately 40%. TURN states that the Commission limited use of surcharge revenues to paying future procurement costs and not for recovery of any past costs. TURN asserts that recent developments in the wholesale electricity market eliminate the need for the surcharges, in part or whole. TURN asks that the Commission order a rate reduction along with a refund of overcollected surcharge revenues. (Complaint, pages 3-4.)

Defendant moves for dismissal. Defendant asserts, among other things, that the complaint is a collateral attack on Decision (D.) 01-03-082 and D.02-01-001 in violation of Public Utilities Code Section 1709.<sup>1</sup>

TURN responds that the complaint does not attack D.01-03-082 and D.02-01-001, but seeks Commission enforcement of those decisions. TURN asserts that the surcharge revenues adopted in D.01-03-082 may not be used for any but the limited purpose adopted therein, and that overcollected revenues must be returned to ratepayers. Moreover, TURN contends that defendant may not use surcharge or other revenues to pay past undercollected transition costs, and to do so would violate the limitation on cost recovery pursuant to the rate freeze embodied in Public Utilities Code Section 368.

Defendant replies that it agrees with TURN that the Commission should “enforce” the provisions of D.01-03-082 and D.02-01-001. Defendant states that it likely disagrees with TURN on the meaning of those provisions and their enforcement, but that any disagreements should be aired and resolved in the proceedings underlying those decisions. Defendant concludes that the complaint is a premature challenge to decisions the Commission is yet to make in A.00-11-038 *et al.*

Defendant is correct. D.02-01-001 grants limited rehearing of D.01-03-082 regarding the end of the rate freeze. The issues to be considered in the rehearing

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<sup>1</sup> D.01-03-082 adopts surcharges totaling \$0.04 per kilowatt-hour, subject to surcharge revenues being used to pay future power purchase costs. D.02-01-001 grants rehearing of D.01-03-082 limited to “the issue of whether rate controls [rate freeze] under AB 1890 should be ended.” (Ordering Paragraph 2.) Pub. Util. Code Section 1709 states that: “In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”

include how to harmonize AB 1890 with subsequent legislation; the extent, if any, to which transition costs may be recovered after the end of the rate freeze; when the rate freeze ended; and whether or not the limitation of using surcharge revenues only for ongoing procurement costs should be lifted. (*See* Rulings dated May 7, 2002 and July 1, 2002.) The rehearing will also include a determination of the extent and disposition of stranded costs left unrecovered. (D.02-01-001, *mimeo.*, page 25.)

The issues before the Commission in the rehearing granted by D.02-01-001 include the issues presented by TURN on behalf of complainants, and Commission resolution of those issues will resolve the issues presented in C.02-02-027. As defendant says: “development of an evidentiary record in this proceeding [C.02-02-027] as well as in other proceedings [A.00-11-038 *et al.*] would be duplicative and inefficient.” (Reply dated June 7, 2002, page 5.) Therefore, to promote efficient use of limited Commission and party resources, C.02-02-027 is consolidated with the rehearing of the rate freeze granted in D.02-01-001.

## **2. Schedule, Hearings and Record**

The schedule in the rehearing on the end of the rate freeze will control. Whether or not hearings are held will be determined in the rehearing proceeding based on issues addressed in legal briefs, comments, reply comments, and motions for hearing. (D.02-01-001, *mimeo.*, page 25; Ruling dated May 7, 2002; Ruling dated July 1, 2002.)

TURN is a party in the rehearing, and filed opening and reply briefs in response to the May 7, 2002 Ruling. Moreover, TURN filed comments and reply comments in response to the July 1, 2002 Ruling. TURN did not, however, move for hearing. Nonetheless, a motion for hearing is pending, and will be ruled

upon shortly. (Motion dated July 25, 2002 filed by California Industrial Users (CIU).)

The record will be composed of all filed and served documents in this phase of A.00-11-038 *et al.* If hearing is held, the record will also include evidence received at hearing.

### **3. Category**

TURN recommended that the proceeding be categorized as ratesetting. The Commission preliminarily categorized the matter as ratesetting. In its answer to the complaint, defendant did not disagree with the Commission's preliminary categorization. No appeals of categorization were filed. (Rule 6.4.) The proceeding is categorized as ratesetting.

### **4. Final Oral Argument**

A party in a ratesetting proceeding has the right to make a final oral argument before the Commission, if the final oral argument is requested within the time and manner specified in the Scoping Memo or later ruling. (Rule 8(d).) Parties shall use the following procedure for requesting final oral argument.

Any party seeking to present final oral argument shall file and serve a motion no later than 10 days after the date a proposed or draft decision is filed and served in the rehearing on the end of the rate freeze. Responses, if any, shall be filed and served no later than 5 days after the date of a motion.

The motion shall state the request, the amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion shall contain all information necessary for the Commission to make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable final oral argument. If more than one party plans to move for final oral argument, parties shall use their best efforts to

present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion.

If the Commission subsequently finds that no hearing is required on matters regarding the end of the rate freeze, Rule 8(d) shall cease to apply, along with a party's right to make a final oral argument. (Rule 6.6.) For example, the right to final oral argument will expire if the pending CIU motion for hearing is denied.

If a later phase is held, however, which includes a hearing on the extent and disposition of stranded costs left unrecovered (D.02-01-001, *mimeo.*, page 25—rehearing Phase 2), parties shall have a right to final oral argument in that phase on the issues therein. Absent a subsequent Scoping Memo or ruling which determines otherwise, parties shall file and serve a motion for final oral argument no later than 10 days after the date a proposed or draft decision is filed and served in rehearing Phase 2, if any. Responses, if any, shall be filed and served no later than 5 days after the date of a motion. The motion and response shall include the items described above (*e.g.*, request, amount of time, recommended procedure, order of parties, anything else necessary to the motion).

## **5. Ex Parte Communications**

Ex parte communications for ratesetting proceedings, and the reporting of such communications, are governed by Commission Rules, including Rule 7(c) and 7.1. Both C.02-02-027 and A.00-11-038 *et al.* are categorized as ratesetting. Parties shall comply with these rules.

## 6. Electronic Service

Protocols for the filing and service of pleadings and documents in A.00-11-038 *et al.* have already been adopted, and will continue to apply.<sup>2</sup> That is, paper copies must be filed with the Commission's Docket Office. A paper copy must be served on each party and state service participant who does not have an electronic mail address.<sup>3</sup> A paper copy should be served on each party and state service participant who requests one. An electronic copy must be served on each party and state service participant with an electronic mail address. Electronic copies should also be served on those in the information only category.<sup>4</sup> Electronic mail addresses are available on the Commission's web page.<sup>5</sup> Finally, service of both a paper copy and an electronic copy must be made on Administrative Law Judge Mattson.

### **IT IS RULED** that:

1. Case (C.) 02-02-027 is consolidated with Application (A.) 00-11-038 *et al.* for the matter of the rehearing of Decision (D.) 01-03-082 granted by D.02-01-001 regarding the end of the rate freeze.
2. The schedule for C.02-02-027 and the need for hearings shall be determined in, and controlled by, the schedule and hearings in the rehearing on the end of

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<sup>2</sup> See, for example, Rulings in A.00-11-038 dated April 11, 2001; April 27, 2001; June 28, 2001; September 18, 2001; December 21, 2001; May 7, 2002; and July 1, 2002.

<sup>3</sup> The current service list includes over 100 parties in the appearance (party) category, but only about four do not have an electronic mail address. Over 40 persons are currently in the state service (non-party) category and all have an electronic mail address.

<sup>4</sup> Of the nearly 100 participants currently in the information only (non-party) category, only about 5 do not have an electronic mail address. Parties may, but are not required, to serve a paper copy on these approximately 5 information only participants.

<sup>5</sup> See, for example, service lists for C.02-02-027 and A.00-11-038 *et al.*, comma-delimited file, Column D.

the rate freeze in A.00-11-038 *et al.* The record is composed of all filed and served documents in this phase of A.00-11-038 *et al.* If hearing is held, the record shall also include evidence received at hearing.

3. The category of C.02-02-027 is ratesetting.

4. If hearing is held in either the current phase of the rehearing matter or in a later phase, as described in the body of this Ruling, parties may file and serve a motion for final oral argument and a response. Motions and responses shall be filed and served consistent with the schedule, and shall contain the information, stated in the body of this Ruling.

5. Ex parte communications, and the reporting of such communications, are govern by the Commission's Rules of Practice and Procedure, including Rules 7(c) and 7.1, and parties shall comply with the requirements of those rules.

6. Electronic service protocols already established in A.00-11-038 *et al.* shall continue to apply. In summary, paper copies of pleadings and documents shall be filed with the Docket Office, served on each party and state service participant who does not have an electronic mail address, served on any party and state service participant at their request, and served on Administrative Law Judge Mattson. Electronic copies shall be served on all participants who have an electronic mail address including parties, state service participants, information only participants, and Administrative Law Judge Mattson.

Dated August 16, 2002, at San Francisco, California.

/s/ Loretta M. Lynch  
Loretta M. Lynch  
Assigned Commissioner



**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo in Case 02-02-027 and Consolidation of Proceedings on all parties of record in this proceeding or their attorneys of record.

Dated August 16, 2002, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.